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DOLLAR TREE STORES, INC.

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 MIGUEL A. CRUZ, and JOHN D. HANSEN,
17 individually and on behalf of all others
similarly situated,

18 Plaintiffs,

19 v.

20 DOLLAR TREE STORES, INC.,
Defendant.

CASE NO. C 07 2050 SC

21 ROBERT RUNNINGS individually, and on
22 behalf of all others similarly situated,

23 Plaintiff,

24 v.

25 DOLLAR TREE STORES, INC.,
26 Defendant.

CASE NO. C 07 04012 SC

**DECLARATION OF CARLOS
HERNANDEZ IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

JUDGE: Hon. Samuel Conti
COMPLAINTS FILED: April 11, 2007
July 6, 2007
TRIAL DATES: No dates set.

1 I, Carlos Hernandez, do hereby declare:

2 1. I am employed by Dollar Tree Stores, Inc. ("Dollar Tree") in the
3 position of Regional Training Manager, a position I have held since about July 2005. I
4 started with Dollar Tree as a Manager in Training in December 2001, became a Store
5 Manager in January 2002, was promoted to a District Manager position in about August
6 2003, and was again promoted to a Regional Training Manager position in about July
7 2005. Prior to joining Dollar Tree, I spent some twenty-four years working for retail
8 businesses, starting with Albertson's (the grocery chain) where my last position was as a
9 District Manager. I also worked as a Training Manager for Office Max between my
10 Albertson's employment and my start with Dollar Tree.

11 2. In my first position with Dollar Tree, I performed store manager
12 duties as a Store Manager in two different Dollar Tree stores, one located in Pittsburg,
13 California (Store 1556) and the second in Sacramento, California (Store 1229). As a
14 District Manager, I was responsible for overseeing the operations of several stores in my
15 District, located in the Sacramento, California area. The Store Managers of each store
16 in my District reported to me. I, in turn, reported to a Regional Director who had
17 responsibility for several districts. In my current position, I am responsible for
18 implementing training programs at both the Store Manager and District Manager level. I
19 have provided training to Dollar Tree Store Managers throughout the country, and
20 regularly visit California stores both on my own, and together with Dollar Tree managers,
21 such as the Regional Director, the Zone Vice President and District Managers. My
22 region is Region 9, which consists of some 98 stores in the Central Valley of California
23 and in Nevada. The stores managed by Plaintiffs Cruz, Hansen and Runnings were
24 formerly part of Region 9 (now transferred to Region 23). From about August 2005 to
25 February 2007, the stores in which the Plaintiffs worked were in my Region. Because of
26 the duties I have here described (performing the job, supervising the job, and providing
27 training for the job), I have personal knowledge of the duties performed by Dollar Tree
28

1 Store Managers in California. I submit this declaration to describe the responsibilities of
2 California Store Managers.

3 3. Since I have been a Regional Training Manager for Dollar Tree in
4 California, I have observed that Dollar Tree has placed increasing emphasis on training
5 Store Managers to manage the store, as opposed to performing hourly tasks that do not
6 have any management components. This emphasis has substantially increased since
7 the fall of 2005. There are overlaps in functions; for example, when a Store Manager is
8 training a stocker by working with that employee. Dollar Tree does not want its Store
9 Managers spending a majority of their time in non-management work; the basic function
10 of a Store Manager is to run the store, which means, among other tasks, planning sales,
11 ordering goods, merchandising goods, controlling inventory, accounting for receipts, and
12 supervising the store personnel. Each Store Manager is responsible for hiring,
13 evaluation, training, and discipline of hourly associates. In the case of Assistant Store
14 Managers, the District Manager often becomes involved in the hiring process. We also
15 ask Store Managers to speak with Human Resources personnel about a termination
16 decision, but the Store Manager has full authority to initiate a termination. The Store
17 Manager is responsible for scheduling employees, taking into account the business of
18 the store, the time of freight deliveries and the number of employees working in the
19 store. The Store Manager and the Assistant Store Managers are the management team
20 at the store. The Store Manager is the highest level of management at the Store. The
21 Store Manager is essentially responsible for operating a retail location, including
22 overseeing the delivery of goods, the merchandising of the goods and the sales function.
23 Many stores in California have annual sales of \$1.5 M to \$4 M. The number of Assistant
24 Store Managers in each store in my Region ranges from three to four. The number of
25 hourly associates (who perform cashier, stocking, and store recovery duties, and who
26 generally work on a part time basis) ranges from twelve to twenty employees (and
27 increases during the Christmas season). The variety of food products and goods sold by
28 any Dollar Tree store will vary depending upon whether the store sells liquor or frozen

1 food items. Stores generally average at any given time between 4500 and 5000 SKU's
2 (each SKU being a separate kind of good for sale). This number varies due to the time
3 of the year and store size.

4 4. Dollar Tree stores are usually classified by square footage (both
5 gross and that available to the sales floor) and store layout as well as store location.
6 Stores are, for example, referred to as mall or stand-alone stores to designate where
7 they are located.

8 Dollar Tree has the following descriptions for store classifications:

9 SO (Small) applicable to stores of less than 4,700 retail square feet;

10 LO (Large) applicable to 4,700 to 7,899 retail square feet;

11 XO (Super) applicable to 7,900 to 12,579 retail square feet;

12 RT (Race Track) applicable to stores of greater than 12,580 square feet.

13 The store classification affects many aspects of managing a store. It affects what goods
14 the Store Manager may order, the merchandising of the store, the number of personnel
15 to be supervised, and the manner in which tasks in a store are performed. The sales
16 volume of the store, regardless of classification, has a similar effect, as the number of
17 employees, the size and number of orders, merchandising work and other store tasks
18 vary depending upon the sales level.

19 5. The work of a Store Manager changes depending upon the location,
20 volume, configuration and personnel in a store. Every store has particularized
21 circumstances, ranging from the type of clientele, to the location of the store, to the type
22 of personnel available for hire, to the most popular goods, to the comparable sizes of the
23 selling area and freight storage areas. The type of clientele affects the amount of time
24 devoted to recovery (the work necessary to pick up a store) and to shrink prevention (the
25 work necessary for loss and damage control). The number of customers also affects
26 recovery efforts. Generally, the higher the volume, the more time that is required for
27 recovery. The larger a store, the more allocations the store will have, and the more
28 ordering decisions a Manager will need to make. A Store Manager with a limited storage

1 area has different considerations in scheduling stocking crews and in getting
2 merchandise to the shelves than does a Store Manager with a larger back room. The
3 number of end caps (the display at the end of each store row which should attractively
4 market seasonal or other top selling goods) affects how much merchandising work a
5 Store Manager must perform or oversee. Some stores have extended front windows;
6 others have less window space. The front windows may be in different configurations
7 which will affect building window displays. There are many variables between stores; it
8 is the Store Manager's responsibility to understand the particular aspects of his/her store
9 and to manage the Company's directions in accordance with the needs of the particular
10 store. (I use his in the remainder of the declaration to refer to all Store Managers,
11 whether male or female.)

12 6. When I train Store Managers, I tell them that planning is the key to
13 success in operating the store. I say that 25% to 30% of their time must be devoted to
14 planning the staffing and operations of the store to maximize sales. When I make this
15 presentation, I define planning as hours spent in the office. Dollar Tree asks all Store
16 Managers to develop a Master List for a 6 to 10 day time period. This is a continuing list
17 so that if tasks do not get accomplished within that period, they are placed on the next
18 Master List for completion. The Master List then should be broken down to a daily task
19 list with the Store Manager having the Daily Planner handy throughout the day, for
20 example on a 3 by 5 index card. The Master List and the Daily Planner should be
21 updated every day. This allows the Store Manager to set goals, prioritize tasks, keep
22 track of what has been completed, and to organize delegation of the various tasks.
23 There are a number of store activities that fall within the planning function. For example,
24 the Store Manager needs to review sales trends and popular selling items and needs to
25 plan the placement of orders to be consistent with sales trends. The Store Manager
26 must schedule employees, decide upon how the merchandising will be displayed and
27 oversee all employees who are engaged in the various tasks required of a retail
28 operation. The Store Manager must supervise the placement of goods on shelves, the

1 sales function, the store's presentation, the way goods are merchandised, the collection
2 and deposit of cash, customer transactions, employee payroll and time recording, and all
3 personnel actions for store employees. If a Store Manager spends 25% to 30% of his
4 time in planning, and taking into consideration the remaining supervisory functions to be
5 performed, the Store Manager will spend more than 50% of his time on management
6 responsibilities.

7 7. When I was a District Manager, I trained Store Managers by
8 breaking down every hour of time that they work and asking them whether someone else
9 in the store could be performing certain functions. If that is the case, the Store Manager
10 should delegate so that the Store Manager is performing only the work that most other
11 employees cannot do. Only Store Managers have the primary function of planning and
12 assigning work. Only Store Managers can approve payroll. Store Managers are
13 ultimately responsible for ordering for the store, including ordering food products for
14 those stores which sell refrigerated food. Store Managers are responsible for reviewing
15 store employees' time records to make sure that all work is accurately recorded. Store
16 Managers are responsible for determining the number of employees needed, including
17 deciding upon additional hiring needs for the November/December holiday season.
18 Store Managers are ultimately responsible for accounting for all sales transactions in the
19 store, and should regularly review cashier statistics (contained on a form entitled a
20 Cashier Comparison Report) to insure that cashiers are productive and honest. Store
21 Managers should review such report to make sure that there is nothing unusual about
22 the employee's average transactions and that line item voids are both within Company
23 standards and not otherwise unusual. Store Managers should conduct regular till audits
24 (making sure that the amount of cash in the register corresponds to the transaction
25 accounts). Store Managers are responsible for controlling both internal and external
26 inventory loss in the store, including taking steps to prevent stealing and to record
27 accurately goods that cannot be sold or are being sold as part of a \$1.00 grab bag
28 (referred to as a mark up/mark down function). As part of the mark up/mark down

1 function, Store Managers must account for breakage, defective goods, expiration dates
2 and field markdowns (often merchandise placed in a grab bag) through the mark
3 up/mark down function. Store Managers are responsible for store presentation; the store
4 should be clean and recovered, with attractive displays of end caps, impulse items on
5 clip strips, gondola displays, and other forms of merchandise display. This function also
6 includes making sure that stockers keep the store's shelves full. The degree of
7 autonomy at the Store Manager level is an aspect of Dollar Tree's business that I have
8 always enjoyed.

9 8. One of the major discretionary responsibilities of a Store Manager is
10 in merchandising. The Company assists Store Managers by providing seasonal
11 planning guides indicating when merchandise for a particular holiday should be
12 displayed and providing guidelines for how the store windows and some end caps
13 should look. The Store Manager retains discretion in deciding how many facings (rows
14 of product) he stocks for any particular goods. The Store Manager can expand or shrink
15 the promotional areas provided by the sales planning guides based on what is selling in
16 his store. Even as to those displays that are provided in the planning guides, the Store
17 Manager must apply the guides to the lay-out and size of the particular store. The
18 seasonal planning guide is often no more specific than "set a Wow table with Valentine's
19 Day goods". (A Wow table is a table in the front of a store which displays seasonal or
20 other theme merchandise.) Attached hereto as **Exhibit 1** are true and correct copies of
21 photographs I took of the Valentine's Day displays in three separate stores in 2005. One
22 Store Manager decided to use balloons throughout the store and over aisles. A second
23 Store Manager decided upon a Wow table with cards, bears and picture frames. The
24 third picture in Exhibit 1 shows a shelving display for Valentine's Day in a different store.
25 Attached hereto as **Exhibit 2** is a true and correct copy of a Saint Patrick's Day Wow
26 table. Again, the instruction was a general one to develop a Wow table for that holiday.
27 Attached hereto as **Exhibit 3** is a true and correct copy of the Wow table for the
28 December holiday season for one store. Attached hereto as **Exhibits 4 and 5** are,

1 respectively, Wow tables meeting the general request to create a candle and picture
2 frame display (Exhibit 4) and to create a display for Coke (Exhibit 5). Exhibits 2 through
3 5 are photos I took in various stores in Region 9 in 2004 and 2005.

4 9. Dollar Tree often creates baskets for various holidays. We provide
5 general direction (such as a basket of bath-related materials) but it is up to the Store
6 Manager to decide what goods will be assembled and how the baskets will be displayed.
7 There are end caps for which no specific instructions are given. For those end caps, for
8 gondolas and for other promotional displays, the Store Manager can be creative in
9 linking products, colors and selling themes. For example, a Store Manager might decide
10 to build a cooking display, bringing together color-coordinated items related to cooking.
11 A Store Manager might decide to have a pallet display (placing goods on a pallet in a
12 particular department). A Store Manager might decide to display goods through a cut
13 box (using the shipment box cut open to display product). Manager promotions are
14 totally up to the Store Manager to create, depending upon what goods the Manager has
15 ordered, what sells to the clientele of the store, and the Manager's creativity. The Store
16 Manager should coordinate the merchandising with his analysis of what is selling in the
17 store and with what he could sell at a higher margin. For example, when reviewing
18 goods to order, the Store Manager might notice that glassware has a high margin.
19 Therefore, he could build a promotional display of glassware, wine bags and textiles to
20 promote the glassware. The Store Manager would need to coordinate ordering of
21 glassware with the promotion.

22 10. One of the Store Manager's functions is ordering. Orders are
23 placed once or twice a week, depending upon the store's sales volume. Attached hereto
24 as **Exhibit 6** are true and correct copy of excerpts from guidelines Dollar Tree provides
25 to Store Managers for ordering. Dollar Tree utilizes a Store Level Inventory Control
26 system ("SLIC") which allows the Store Manager to see different descriptions of the
27 SKU's ordered or available for order. Goods are ordered through one of three ways: (1)
28 An Advanced Store Replenishment System ("ASR") which automatically re-orders based

1 upon a tabulation of what is sold. (2) An allocation system which provides a specified
 2 amount to each store. (3) Orders placed by the Store Manager based on his analysis of
 3 sales trends and promotional opportunities. We ask Store Managers to order between
 4 22 and 25% of the product in their store. The Store Manager has a number of tools to
 5 assist in planning the ordering process in such a way that sales are maximized. Those
 6 tools are part of a planning book which we ask Store Managers in California to compile,
 7 update and use as part of the planning process. It is called a Playbook. Attached hereto
 8 and incorporated herein by reference as **Exhibit 7** is the index of a Playbook. The index
 9 identifies three documents that are primary ordering tools: (1) The ordering scorecard
 10 which lists goods in a particular store by department, with each department then
 11 analyzed on a weekly basis for the amount of sales, the percentage of that department's
 12 sales to the overall store sales, the margin of sales, and the amount of such sales
 13 ordered through ASR, the allocation system and by the manager. (2) A list of the Top
 14 200 items sold in the store for a week's period which lists those items by the particular
 15 good, rather than by the department, and also provides the SKU number, the number of
 16 units of each good sold, and the retail amount of the sale of each item. (3) A Top 10 list
 17 on a Company-wide basis of the products sold in a particular period. The Store Manager
 18 must analyze all of that information for merchandising and ordering purposes. Every
 19 third week is an "open to buy" week where the manager may order non-ASR goods in
 20 larger quantities than what the ordering system generally allows. This permits smaller
 21 stores to order higher quantities of goods that are strong sellers, and permits Store
 22 Managers to develop promotional displays. Another planning tool which is part of the
 23 Playbook is the weekly business summary which provides sales data, inventory data,
 24 shrink data, SPEH data and mark up/mark down data by store and by district.

25 11. The Store Manager is ultimately responsible for the evaluation and
 26 training of all store employees. The better the Store Manager is at hiring and training,
 27 the more the Store Manager will be able to delegate to the Assistant Store Manager
 28 level. Assistant Store Managers, even though they have supervisory responsibilities, are

1 paid on an hourly basis and treated as non-exempt employees. Only the Store Manager
2 at the store level is classified as an exempt employee. Many of the above functions can
3 be delegated to the Assistant Manager level; but it remains the Store Manager's
4 responsibility to insure that all store-related functions are effectively implemented.

5 12. Attached as **Exhibit 8** is a true and correct copy of Dollar Tree's
6 Compass policy providing guidelines to a Store Manager concerning the scheduling of
7 employees. It is the Store Manager's responsibility to finalize the schedule and then to
8 revise it as necessary during the week to meet increased sales requirements and
9 employees' time off needs. The system creates a preliminary schedule for cashier
10 hours, but the Store Manager must review the schedule and insert hours to cover both
11 gaps in coverage and anticipated peak sales hours. The Store Manager schedules all
12 stocking and Assistant Store Manager hours. Another duty of a Store Manager is to
13 protect Company assets. Dollar Tree provides the Store Manager with guidelines in how
14 to analyze cashier statistics, how to conduct till audits, how to conduct bag checks of
15 employees, how to monitor the transfer of goods into and out of a store, how to properly
16 record mark ups and mark downs, how to record and control cash and bank deposits,
17 and how to monitor those goods which are delivered directly to the store by a vendor
18 (called DSD). The Store Manager is responsible for the implementation and oversight of
19 all such asset protection functions.

20 13. As a general matter, each store is given a projected number of
21 employee hours based on anticipated sales (which are in turn based upon an analysis of
22 what the sales were for a similar period in the prior year). California has the highest
23 minimum allocation of any state in the country, with the goal of insuring compliance with
24 meal and break period and exempt requirements. It is up to the Store Manager (with
25 assistance from the District Manager) to constantly monitor his expected hours (called
26 SPEH or Sales Per Employee Hour) to make sure that he is scheduling additional hours
27 if sales increase, and cutting back if sales decrease, while having necessary crews to
28 stock and run the cash registers. When I was a District Manager, responsible for

1 overseeing 12 Store Managers, at stores located in the greater Sacramento area, I
2 reviewed my Store Managers' work to make sure that they were spending a majority of
3 their time performing management functions. If I thought that a manager was spending
4 too much time throwing freight, for example, I would work with the manager to improve
5 his/her planning, delegation and training skills so that others were doing that work. I
6 have consistently said the following to Store Managers (both when I was a District
7 Manager and in my present training role): You are a manager; you need to be primarily
8 involved in planning. We expect you to do functions that no one else can do.

9 14. Dollar Tree reminds its Store Managers of the need to spend more
10 than 50% of their time in performing management responsibilities by making available a
11 certification form (one format of which is attached as **Exhibit 9**) to record on a weekly
12 basis whether the employee is meeting that test. During my training of Store Managers,
13 I consistently tell Store Managers to tell the truth on the certifications so that the
14 Company will know where it needs to concentrate to make sure that the Store Manager
15 is spending a majority of time in management functions.

16 15. Dollar Tree has spent substantial resources in training for Store
17 Managers. We now have an MIT (Manager in Training) program for all persons hired
18 into a Store Manager position. There is an eight week training period, done at a store
19 location. However, on four different occasions during that eight week period, we provide
20 training at a variety of learning centers. (I often hold training sessions at a learning
21 center located at the Company distribution center in Stockton.) One such session
22 provides the history and philosophy of Dollar Tree; another provides our no-harassment
23 and non-discrimination training (called Respect in the Work Place); one session focuses
24 on interviewing and hiring; and one session focuses on skills such as planning,
25 communication, execution and follow-up (called Creating a Routine).

26 16. Attached as **Exhibit 10** are slides from a Power Point presentation
27 which I regularly make in the MIT training program. The slides in Exhibit 10 provide
28 training for the planning function. Attached as **Exhibit 11** are further slides from the

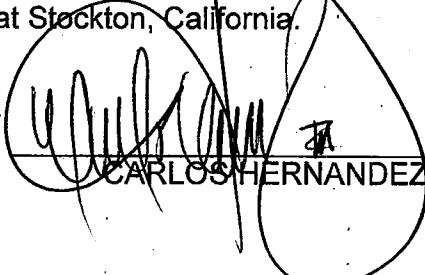
1 same Power Point presentation which provide training on how to delegate. These slides
 2 are consistent with the advice and training we give all Store Managers, whether or not
 3 they are in the MIT program. As can be seen from Exhibits 10 and 11, Dollar Tree
 4 emphasizes the importance of the Store Manager's continuously engaging in planning.
 5 We advise keeping a master list of tasks to be accomplished. We often advise Store
 6 Managers to use 3 by 5 index cards so that they have ready access to their planning
 7 lists. We discuss the importance of prioritization and delegation. The presentation
 8 depicted in Exhibit 11 stresses the importance of delegation in a number of different
 9 ways. There is a slide discussing excuses for not delegating, and why those excuses
 10 are not valid. There are slides on selecting the right person to whom the task should be
 11 delegated and for follow up by the manager. All of this training is to help insure that the
 12 Store Manager does not perform non-management tasks himself. Attached as
 13 **Exhibit 12** is a sample Master List which I use in training materials. Of all the tasks on
 14 Exhibit 12, I would expect managers to perform only three themselves ("review ad
 15 checklist with team"; "check May pull & hold list for compliance"; and "check items from
 16 zero sales report"). I expect that the remaining tasks would be delegated and the
 17 performance of the work supervised by the Store Manager. This is what I tell Store
 18 Managers in training with this material.

19 17. Store Managers' salaries in Region 9 currently range from \$40,000
 20 to \$63,654, with the median salary at \$48,500. In addition to their salary, Store
 21 Managers receive incentive bonuses based exclusively on sales-related factors. Store
 22 Managers are eligible to earn a bonus per period (approximately every 4-5 weeks) based
 23 on an increase in sales, and more recently (effective period 9 in 2007) based on sales
 24 increases including a margin component. Attached hereto as **Exhibits 13 and 14** are
 25 descriptions of the Store Management Bonus Plan. The steps a Store Manager can
 26 take to increase sales are: (1) Make sure the store is fully stocked with as much freight
 27 as possible on the sales floor; (2) Pay careful attention to ordering both in terms of
 28 assortment and quantity; (3) Make sure that every SKU available to the store is on the

1 sales floor; (4) Develop attractive merchandising displays; (5) Analyze whether the
2 store's top selling items are on the front end caps; (6) Make sure that tie-ins of high
3 margin goods have been placed near the best selling goods, again in a colorful and
4 attractive display; and (7) Do everything possible to improve customer service, including
5 having meetings with the staff to emphasize how customers should be treated.

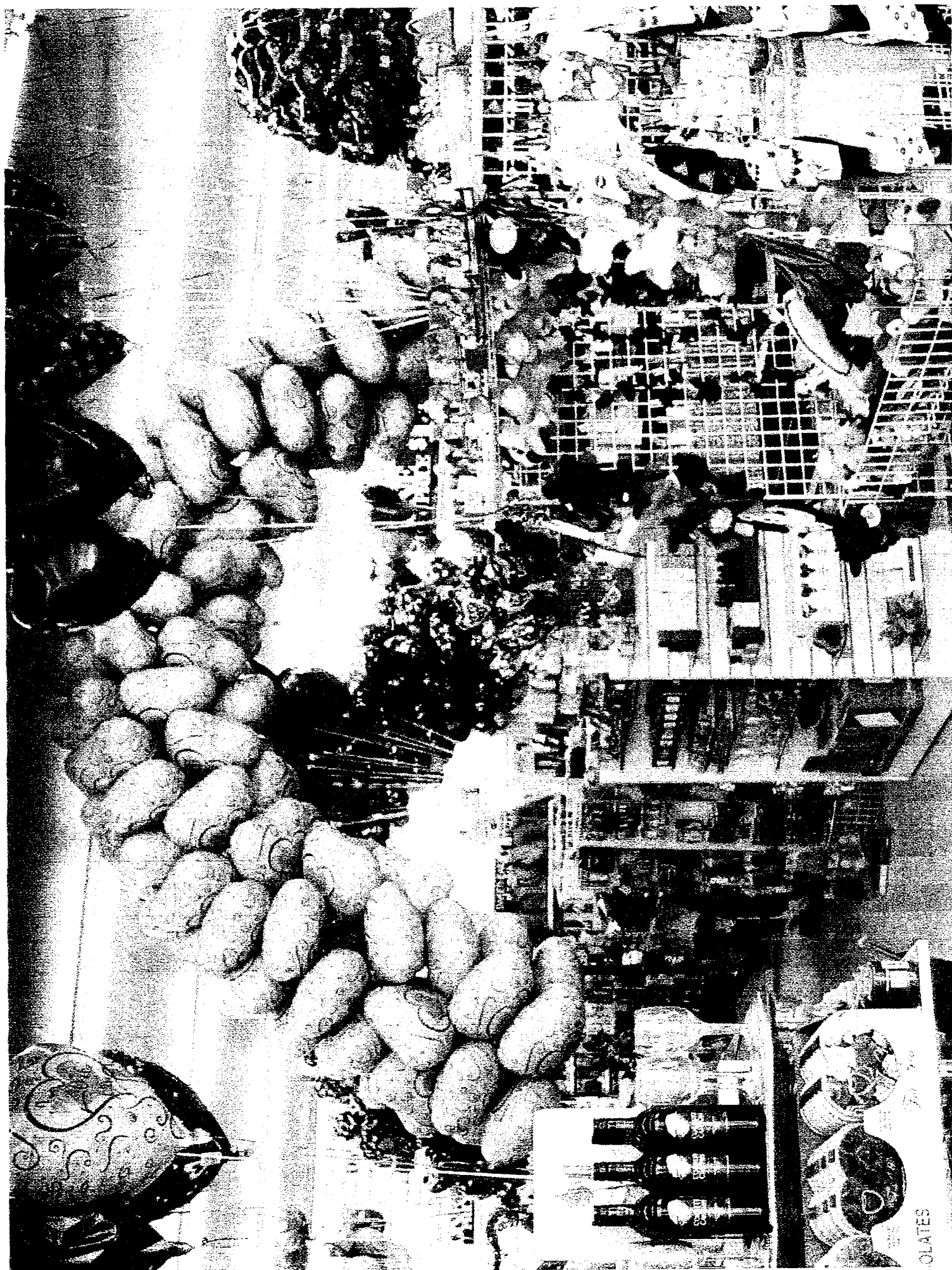
6 I have read the attached declaration and do hereby declare, under penalty
7 of perjury under the laws of the United States, that it is true and correct.

8 Executed on January 2, 2008 at Stockton, California.

9
10 
11 CARLOS HERNANDEZ
12

13 4819-5830-3234.1
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Exhibit 1





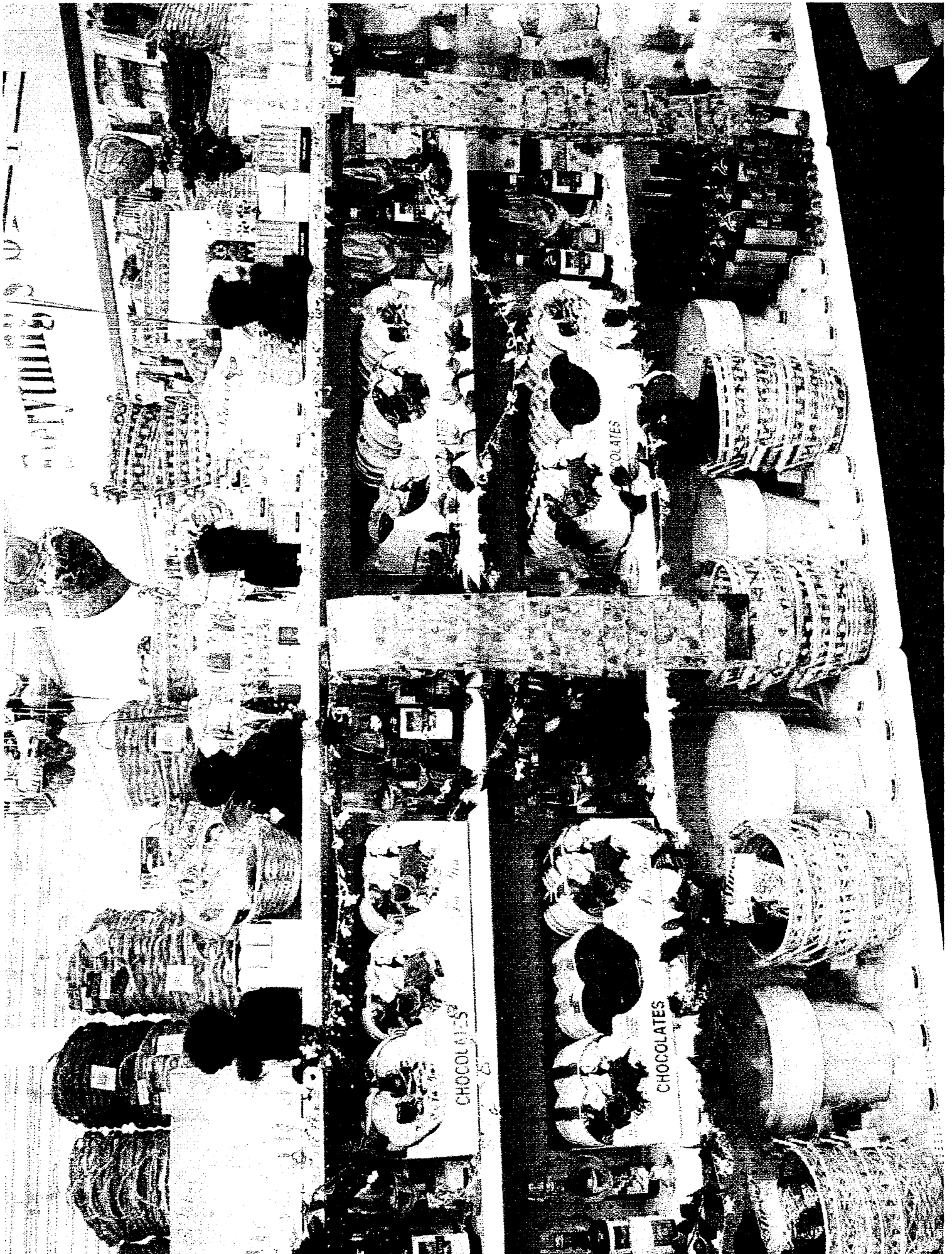


Exhibit 2



Exhibit 3



Exhibit 4

